

JOHN E. STENGEL

IBLA 76-199

Decided February 25, 1976

Appeal from decision of the Utah State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease U-6353-A.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:
Rentals

An oil and gas lease terminated by operation of law for failure to pay the advance rental on time cannot be reinstated when the petitioner fails to show that the late payment of rental was justifiable or not due to a lack of reasonable diligence. Loss of a checkbook through theft 5 days before the due date for payment does not establish causality sufficient to constitute a justifiable excuse.

APPEARANCES: John E. Stengel, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

John E. Stengel has appealed from a decision of the Utah State Office, Bureau of Land Management, which rejected his petition for reinstatement of oil and gas lease U-6353-A. The lease at issue terminated by operation of law on account of appellant's failure to pay the annual rental on or before the due date, July 1, 1975. 30 U.S.C. § 188(b) (1970). Appellant's payment, postmarked June 30, 1975, was received in the Utah State Office July 3, 1975. Appellant filed a petition for reinstatement pursuant to 30 U.S.C. § 188(c) (1970), which provides for reinstatement of oil and gas leases terminated for failure to pay annual rental on time upon a showing that "such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." Id.; 43 CFR 3108.2-1(c).

[1] In his petition, appellant asserted that the check and letter were dated June 29, 1975, and that a special effort was made to mail the payment on June 29, after his return from a vacation. The State Office relied on the June 30 postmark in denying the petition. The Board has held that reasonable diligence is not shown when the payment is postmarked 1 day before the due date. E.g., Louis Samuel, 8 IBLA 268, 277 (IBLA 72-246), 278 (IBLA 72-284), 280 (IBLA 72-395, 72-408) (1972). Cf. Karl Heinz Schober, 16 IBLA 382, 383 (1974); R. G. Price, 8 IBLA 290 (1972).

In his appeal, Mr. Stengel asserts his special diligence in the fact that even though his wife's purse with their checkbook was stolen on June 27, 1975, while they were on vacation, he made a special trip to the post office on June 29 to mail the payment. He indicates that even under these circumstances he remembered that he had not mailed payment prior to leaving for the vacation.

The delay in mailing the payment was not, according to the appeal itself, caused by the loss of appellant's checkbook, but rather by appellant's failure to mail the payment prior to leaving on his vacation. As the Board held in Louis Samuel, supra at 274:

Congress by the word "justifiable" was adverting to a limited number of cases where, owing to factors ordinarily outside of the individual's control, the reasonable diligence test could not be met.

We are unable in the circumstances of this case to hold that appellant's failure to pay on time was "justifiable," i.e., caused by factors outside his control. Loss of a checkbook through theft 5 days before the due date for payment does not establish causality sufficient to constitute a justifiable excuse.

As appellant has failed to show that the failure to pay on or before the due date was either justifiable or not due to a lack of reasonable diligence, the petition for reinstatement was properly denied. Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Martin Ritvo Douglas E. Henriques
Administrative Judge

Administrative Judge

